

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 1, 2003

AMENDED IN SENATE JUNE 18, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1367

Introduced by Assembly Member Laird

February 21, 2003

An act to add Section 25150.9 to the Health and Safety Code, and to amend Section 13173 of the Water Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as amended, Laird. Waste: regulation.

(1) Existing law establishes various standards for management and control of hazardous waste. Existing law authorizes the Department of Toxic Substances Control to adopt standards and regulations for the management of hazardous waste, as specified.

This bill would authorize the department to adopt alternative waste management standards by regulation, for *hazardous* waste management activities that meet specified criteria. The bill would require the department to make specified findings and analysis, and to make that analysis available to the public, when it gives notice that it proposes to adopt those regulations and before adopting those regulations.

The bill would provide that the department's authority to adopt regulations pursuant to the bill's provisions shall remain in effect only until January 1, 2007, unless a later enacted statute deletes or extends

that date. However, the bill would also provide that this would not invalidate any regulation adopted pursuant to the bill's authority before that date.

Since a violation of the regulations authorized by this bill would be a crime, the bill would impose a state-mandated local program.

(2) The Porter-Cologne Water Quality Control Act defines the term "designated waste" and authorizes the State Water Resources Control Board to adopt policies with regard to designated waste.

This bill would revise the definition of designated waste to include waste disposed pursuant to the alternative waste management regulations adopted in accordance with the bill.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25150.9 is added to the Health and
2 Safety Code, to read:

3 25150.9. (a) (1) Subject to the requirements of this section,
4 the department may, by regulation, establish ~~waste~~ management
5 standards as an alternative to one or more of the standards specified
6 in this chapter, for specified activities that do not involve the
7 management of any *hazardous* waste other than the *hazardous*
8 wastes identified in paragraph (4).

9 (2) The rulemaking file for any regulation adopted pursuant to
10 paragraph (1) shall identify the standard or standards of this
11 chapter for which the regulation provides alternative standards.
12 Any person subject to the identified standard or standards of this
13 chapter shall comply with either the alternative standard or
14 standards specified in the department's regulations or the standard
15 or standards specified in this chapter. In either case, that person is
16 deemed, and shall be considered by the department and any other
17 entity authorized to enforce this chapter and the regulations
18 adopted pursuant to this chapter, to be in compliance with the



1 standard or standards of this chapter for which the regulation is
2 identified as being an alternative.

3 (3) (A) During the development of a regulation proposed to be
4 adopted pursuant to this section that affects a *hazardous* waste that
5 is proposed to be, or is currently, disposed of in a solid waste
6 facility, the department shall consult with the California Integrated
7 Waste Management Board, the State Water Resources Control
8 Board, and any other appropriate governmental agency.

9 (B) In the case of a *hazardous* waste that is required under this
10 chapter to be disposed of in a class I hazardous waste disposal
11 facility, if the department adopts a regulation pursuant to this
12 section that allows that *hazardous* waste to be disposed of in a solid
13 waste landfill, that *hazardous* waste, when disposed of in a solid
14 waste landfill in accordance with that regulation, shall be disposed
15 of as if the waste were a designated waste, as defined in Section
16 13173 of the Water Code.

17 (4) This section applies only to the following wastes:

18 (A) Hazardous waste that substantially meets the criteria for
19 universal wastes listed in Section 273.81 of Title 40 of the Code
20 of Federal Regulations, and that is regulated as universal waste in
21 the regulations adopted pursuant to this subdivision.

22 (B) Any other *hazardous* waste that meets one or more of the
23 following criteria:

24 (i) The *hazardous* waste is generated by numerous households.

25 (ii) The ~~waste is a~~ hazardous waste ~~that~~ is generated at
26 numerous locations where prolonged accumulation of the
27 hazardous waste, under the requirements of this chapter and the
28 regulations adopted by the department governing accumulation
29 and storage of hazardous waste, presents greater than normal
30 public health or environmental risks. This type of location
31 includes, but is not limited to, elementary and secondary
32 schoolsites, day care centers, and nonhospital facilities that
33 provide day care or residential care for the elderly or the physically
34 or mentally impaired. This type of location also includes small
35 government buildings frequented by numerous members of the
36 public where it may not be reasonably feasible to manage
37 hazardous waste in accordance with the requirements of this
38 chapter and the regulations adopted by the department governing
39 accumulation of hazardous waste.

(iii) The *hazardous* waste is generated by a wide variety of types of establishments, including, but not limited to, households, retail and commercial businesses, office complexes, small businesses, government organizations, and large industrial facilities.

(iv) The *hazardous* waste is a material that is being or has been phased out of common use because the use of the material presents unacceptable risks to public health or safety or the environment.

(v) A *hazardous* waste for which the department determines that, due to the unique characteristics of the *hazardous* waste or the circumstances surrounding its generation or subsequent management, an alternative standard or standards may be more appropriate or workable for the management of that waste than one or more of the requirements of this chapter.

(5) The department may not adopt regulations pursuant to this section that establish alternative standards for the requirements of this chapter that concern the disposal of *hazardous* waste that, on January 1, 2004, is required to be disposed of in a class I hazardous waste disposal facility under this chapter, unless all of the following apply:

(A) The *hazardous* waste meets one of the following criteria:

(i) The *hazardous* waste is household hazardous waste, as defined in Section 25218.1, or, in the case of a ~~nonhazardous waste~~ *waste meeting the criteria of subparagraph (B) of paragraph (6)*, the waste would be household hazardous waste if it met the definition of hazardous waste *set forth in Section 25117*.

(ii) The *hazardous* waste is generated by the abatement of human health hazards present in residential buildings that are being rehabilitated, or otherwise repaired or maintained, for continued or future residential habitation. This clause does not apply to *hazardous* waste generated by the demolition of residential buildings for any purpose.

(iii) The *hazardous* waste is generated by an elementary or secondary schoolsite or a state or local government agency or district, and the *hazardous* waste is being removed from service in an area accessible to the public because it presents an imminent or substantial endangerment to public health, as determined by the department in the rulemaking record. This clause does not apply to liquid *hazardous* waste generated in school laboratories.

(iv) ~~The waste is a hazardous waste and~~ is classified as a special waste in accordance with Section 66261.122 of Title 22 of the California Code of Regulations.

(B) The *hazardous* waste is a material other than soil. This subparagraph does not apply to nonsoil *hazardous* waste containing de minimus amounts of soil, or *hazardous* waste soil meeting the criteria in clause (i) of subparagraph (A).

(C) The department determines and demonstrates in the analysis required pursuant to paragraph (1) of subdivision (b) that there is no readily available technology for recycling the *hazardous* waste. If the department determines that a recycling technology is available, but that an adequate collection and recycling infrastructure does not yet exist, the department may adopt regulations that establish alternative disposal standards for a limited period of time that is sufficient to allow the establishment of that infrastructure.

(6) *Except as specified otherwise, for purposes of this section, “hazardous waste” means a material that is either of the following:*

(A) *A material that meets the definition of “hazardous waste” set forth in Section 25117.*

(B) *A material that does not meet the definition of “hazardous waste” set forth in Section 25117, but that is subject to one or more requirements specified in this chapter.*

(b) Before adopting a regulation pursuant to subdivision (a), the department shall do all of the following:

(1) Prepare an analysis, pursuant to subdivision (c), of the *hazardous* waste management activity to which the alternative management standards will apply. The department shall first prepare the analysis as a preliminary analysis and make it available to the public at the same time that the department gives notice, pursuant to Section 11346.4 of the Government Code, that it proposes to adopt a regulation pursuant to this section establishing *hazardous* waste management standards as an alternative to one or more of the requirements of this chapter. The department shall include, in the notice, a reference that the department has prepared and incorporated in the rulemaking file a preliminary analysis and a statement concerning where a copy of the preliminary analysis can be obtained. The information in the preliminary analysis shall be updated and the department shall make the analysis available

1 to the public as a final analysis not less than 10 working days prior
2 to the date that the department adopts the regulation. For purposes
3 of complying with the notification requirements of this paragraph,
4 the department shall establish a list of interested parties and shall
5 provide the required notice to all parties on the list. The department
6 shall use the best available technology to establish a list that
7 includes as many known, interested parties as possible.

8 (2) Make, and incorporate in the rulemaking file, the findings
9 and demonstrations required by subdivision (d).

10 (3) Impose, as may be necessary, conditions and limitations on
11 the application of the alternative management standards that
12 ensure that the affected activity will not pose a significant potential
13 hazard to human health or safety or to the environment.

14 (c) Before the department gives notice of a proposal to adopt
15 a regulation establishing alternative management standards
16 pursuant to subdivision (a), and before the department adopts the
17 regulation, the department shall evaluate the affected *hazardous*
18 waste management activity and shall prepare, as required by
19 paragraph (1) of subdivision (b), an analysis that addresses all of
20 the following aspects of the activity, to the extent that the
21 requirement or requirements for which alternative management
22 standards will be established may affect these aspects of the
23 activity:

24 (1) The types of *hazardous* waste streams and the estimated
25 amounts of *hazardous* waste that are managed as part of the
26 activity and the hazards to human health or safety or to the
27 environment posed by reasonably foreseeable mismanagement of
28 those *hazardous* wastes and their constituents. The estimate of the
29 amounts of *hazardous* waste that are managed as part of the
30 activity shall be based upon information reasonably available to
31 the department.

32 (2) The complexity of the activity, and the amount and
33 complexity of operator training, equipment installation and
34 maintenance, and monitoring that are required to ensure that the
35 activity is conducted in a manner that safely and effectively
36 manages the particular *hazardous* waste stream.

37 (3) The chemical or physical hazards that are associated with
38 the activity and the degree to which those hazards are similar to,
39 or differ from, the chemical or physical hazards that are associated
40 with the production processes that are carried out in the facilities

1 that produce the *hazardous* waste that is managed as part of the
2 activity.

3 (4) The types of accidents that might reasonably be foreseen to
4 occur during the management of particular types of *hazardous*
5 waste streams as part of the activity, the likely consequences of
6 those accidents, and the actual reasonably available accident
7 history associated with the activity.

8 (5) The types of locations at which the activity may be carried
9 out, an estimate of the number of these locations, and the types of
10 hazards that may be posed by proximity to the land uses described
11 in subdivision (b) of Section 25232. The estimate of the number
12 of locations at which the activity may be carried out shall be based
13 upon information reasonably available to the department.

14 (d) The department may not give notice proposing the adoption
15 of, and the department may not adopt, a regulation pursuant to
16 subdivision (a) unless it first finds and demonstrates, using
17 appropriate information, including the information developed in
18 the analysis prepared pursuant to subdivision (c), all of the
19 following conditions:

20 (1) One of the following applies:

21 (A) The *hazardous* waste is solely a non-RCRA hazardous
22 waste or the *hazardous* waste or its management is exempt from,
23 or is not otherwise regulated pursuant to, the federal act.

24 (B) The standard or standards in this chapter for which
25 alternative standards would be established is or are not a
26 requirement of the federal act, or the regulations adopted to
27 implement the federal act.

28 (C) The *hazardous* waste meets the criteria in subparagraph (A)
29 of paragraph (4) of subdivision (a).

30 (2) There are special characteristics or circumstances
31 associated with the *hazardous* waste, the generating or other
32 management activity, or the universe of persons that generate or
33 manage the *hazardous* waste that make the alternative
34 management standards to be adopted by regulation more
35 appropriate than the corresponding standard or standards
36 contained in this chapter.

37 (3) One of the following applies:

38 (A) The *hazardous* waste management activity, to which the
39 alternative standards would apply, is not significant as a potential
40 hazard to human health or safety or to the environment, when

1 conducted in accordance with the conditions, limitations, and
2 other requirements specified in the regulations adopted pursuant
3 to subdivision (a).

4 (B) The standard or standards in this chapter for which
5 alternative standards would be established are not significant in
6 either of the following:

7 (i) Preventing or mitigating any potential hazard to human
8 health or safety or to the environment posed by the activity subject
9 to the alternative standards.

10 (ii) Ensuring that the activity is conducted in compliance with
11 applicable requirements of this chapter and the regulations
12 adopted pursuant to this chapter.

13 (C) The conditions, limitations, and other requirements
14 specified in the regulations adopted pursuant to subdivision (a)
15 accomplish the same purpose as the corresponding standard or
16 standards in this chapter, but at less cost or greater administrative
17 convenience and without increasing potential risks to human
18 health or safety or the environment.

19 (4) Compliance with the alternative management standards, in
20 lieu of the corresponding standard or standards in this chapter, is
21 not likely to result in any of the following:

22 (A) A significantly reduced ability to track the waste or to
23 ensure that the *hazardous* waste is properly disposed of.

24 (i) If the alternative management standards proposed by the
25 department would allow for a deviation from the hazardous waste
26 manifest requirements specified in this chapter, the department
27 shall include in the analysis prepared pursuant to subdivision (c)
28 an explanation of how the proposed alternate tracking or
29 recordkeeping system would ensure that the affected hazardous
30 waste will be properly tracked and managed.

31 (ii) The requirement of clause (i) does not apply to a proposed
32 alternative tracking or recordkeeping system as that system would
33 apply to household hazardous waste, as defined in Section
34 25218.1.

35 (B) A significant increased potential for any of the following
36 to occur:

37 (i) Release of a *hazardous* waste or its constituents to the
38 environment.

39 (ii) Unauthorized persons or animals to come in contact with,
40 or otherwise be exposed to, a *hazardous* waste or its constituents.



1 (iii) Mismanagement of the *hazardous* waste.

2 (e) The authority of the department to adopt regulations
3 pursuant to this section shall remain in effect only until January 1,
4 2007, unless a later enacted statute, which is enacted on or before
5 January 1, 2007, deletes or extends that date. This subdivision does
6 not invalidate any regulation adopted pursuant to this section prior
7 to January 1, 2007.

8 (f) *Nothing in this section authorizes the department to adopt*
9 *a regulation that does one or more of the following:*

10 (1) *Imposes a requirement on a hazardous waste or other*
11 *material that is not subject to one or more requirements of this*
12 *chapter.*

13 (2) *Imposes a requirement as an addition to, rather than as an*
14 *alternative to, one or more of the requirements of this chapter.*

15 (3) *Supersedes a provision of this chapter that provides a*
16 *conditional or unconditional exclusion, exemption, or exception to*
17 *a requirement of this chapter or the regulations adopted pursuant*
18 *thereto, except that the department may adopt a regulation under*
19 *this section that provides alternative conditions to those specified*
20 *in this chapter for an exclusion, exemption, or exception and that*
21 *allows any affected person to choose between complying with the*
22 *conditions specified in the statute and complying with the*
23 *alternative conditions set forth in the regulations.*

24 (g) Nothing in this section may be construed to limit the
25 authority or responsibility of the department to adopt regulations
26 under any other provision of law.

27 SEC. 2. Section 13173 of the Water Code is amended to read:

28 13173. "Designated waste" means either of the following:

29 (a) Hazardous waste that meets either of the following criteria:

30 (1) The hazardous waste has been granted a variance from
31 hazardous waste management disposal requirements pursuant to
32 Section 25143 of the Health and Safety Code.

33 (2) The hazardous waste is disposed of in other than a class 1
34 hazardous waste disposal facility, in accordance with the
35 regulations adopted by the Department of Toxic Substances
36 Control pursuant to Section 25150.9 of the Health and Safety
37 Code.

38 (b) Nonhazardous waste that consists of, or contains, pollutants
39 that, under ambient environmental conditions at a waste
40 management unit, could be released in concentrations exceeding

1 applicable water quality objectives or that could reasonably be
2 expected to affect beneficial uses of the waters of the state as
3 contained in the appropriate state water quality control plan.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

